IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9039 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHGIRI KAILASHGIRI GOSWAMI

Versus

AHMEDABAD MUNICIPAL TRANSPORT SERVICES

Appearance:

MR HARDIK C RAWAL for Petitioner No. 1

MRS MH RAWAL for Petitioner No. 1

NANAVATI & NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 18/07/2003

ORAL JUDGEMENT

Rule. With the consent of parties, the matter is taken up for hearing today.

1. By filing this petition, the petitioner has challenged the order passed by the Presiding Officer, Labour Court, Ahmedabad, dated 23rd May, 2003, by which the Labour Court has not granted interim relief in the pending Reference, being Reference (LCA) no.262/2003. Against the rejection of interim relief, this Special Civil Application is filed by the petitioner workman. The petitioner was serving at the relevant time as a Conductor in AMTS and on the ground of non-issuance of tickets and other irregularities in the matter of issuing tickets, he was dismissed from service by an order dated 29th May, 1986 and the dismissal was to be effective from 8th July, 1986. The said order was challenged by filing a Civil Suit before the City Civil Court at Ahmedabad, and the dismissal order was stayed by the City Civil Court by granting interim relief during the pendency of the suit. However, since the dispute in question falls within the realms of the Industrial Disputes Act, it seems that the City Civil Court passed an order for return of the plaint to the plaintiff for presentation of the same before the appropriate Court. Thereafter, the petitioner preferred an application before the Competent Authority and, subsequently, the dispute was referred to the Labour Court for adjudication which is now pending before the Labour Court by way of the aforesaid Reference. Before the Labour Court, the petitioner submitted an application for interim relief to the effect that pending Reference, the Corporation may be restrained from implementing the dismissal order passed by the Corporation on 29th May, 1986 which was to be effective from 8th July, 1986.

2. The Labour Court, by the impugned order, rejected the said prayer, against which the present Special Civil Application is filed by the petitioner. At the time of hearing of this Special Civil Application, Mr. Rawal, learned Advocate appearing for the petitioner-workman, submitted that the petitioner is even ready to resign from the service, in case the order of penalty is properly modified. Mr. Nanavaty, learned Senior Advocate appearing for the respondent-Corporation, after taking proper instructions from the Department, has submitted that in order to see that the matter is finally put to an end, it has no objection, if the Court passes an appropriate order, in the interest of justice.

3. In view of the aforesaid consensus prevailing between the parties, and now, since the petitioner has

shown his willingness to tender resignation and he is not pressing for reinstatement in service, considering the fact that the Corporation is also a " State" within the meaning of Article 12 of the Constitution of India, and hence, it is amenable to jurisdiction of this Court under Article 226 of the Constitution of India, and also considering the submissions made by the rival parties, I am of the opinion that the order of dismissal dated 29th May, 1986 giving effect to the same from 8th July, 1986, be modified while intefering with the question of punishment, and instead of dismissal, it would be just and proper to direct the Corporation to reduce the penalty by allowing the petitioner to retire from service on presentation of his resignation.

4. In the above circumstances, it is directed that, in case the petitioner submits his resignation to the AMTS, showing his desire to resign from the post of Driver, latest by 31st July, 2003, the Coporation may accept such resignation and whatever retiral dues the petitioner is entitled to be paid, be paid over to him in accordance with the rules. Order of removal is accordingly set aside and instead, the petitioner is permitted to serve upto 31st July, 2003, with a clear understanding that he will have to resign with effect from that very date and he will no longer remain in the service of the Corporation after the closing hours of the office on 31st July, 2003. The petitioner is accordingly allowed to serve the Corporation only upto 31st July, 2003, and if he is entitled to any retiral dues on the basis of his resigning from service from 31st July, 2003, the Corporation may calculate such dues and pay such amount to the petitioner in accordance with the rules. However, in case the petitioner is entitled to monetary benefits in view of his resignation, his services upto 31st July, 2003 may be taken into account and whatever benefits which are required to be given to the petitioner may be paid within a period of two months from today.

5. Since the petitioner has continued in service by virtue of the interim order of the City Civil Court since 1986 and since he has all throughout earned salary for all these years, no order of penalty be passed now, and considering the totality of the facts and circumstances of the case, the petitioner is now permitted to serve upto 31st July, 2003 , especially when he has shown his inclination to tender his resignation immediately, as indicated above. It is clarified that if the petitioner fails to tender his resignation as above, the earlier dismissal order will stand. The petition is, accordingly, allowed to the aforesaid extent. Rule is

accordingly made absolute. In view of this order, now nothing further needs to be done in the pending Reference, being Reference (LCA) no.262/2003. Mr. Rawal ,on instructions, has submitted that he will file appropriate Purshis in the Labour Court for allowing the petitioner to withdraw the said Reference.

6. Writ be sent to the Labour Court forthwith for information.

(P.B.Majmudar,J.)

stanley-pbm.